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IN THE HIGH COURT OF JUSTICE CH 1998 D NO 2149
CHANCERY DIVISION

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The Royal Courts of Justice
The Strand
London WC2A 2LL

Tuesday, 6th July 1999

Before:

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THE HONOURABLE MR JUSTICE LADDIE

JOHN DONOVAN (Plaintiff)

-v-

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SHELL UK LIMITED (Defendant)

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MR HOBBS QC appeared on behalf of the Plaintiff.

MR COX appeared on behalf of the Defendant.

JUDGE'S COMMENTS

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Computerised transcript of **Smith Bernal Reporting Ltd**
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JUDGE'S COMMENTS

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MR COX: My Lord, your Lordship has, I believe, understood that there have been discussions between the parties.

MR JUSTICE LADDIE: Yes.

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MR COX: And I hope your Lordship has been handed some papers, the first being a deed of compromise and the second a draft order.

MR JUSTICE LADDIE: I have.

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MR COX: My Lord, we would invite your Lordship to make the order in the terms set out in those documents.

MR JUSTICE LADDIE: Before I do that, Mr Cox, I assume that the procedure is now the same as it was, that you cannot withdraw an action without leave of the Court.

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MR COX: My Lord, that is my understanding.

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MR JUSTICE LADDIE: One of the results of this case having gone on for three weeks is that, of course, I have heard evidence from most of the main witnesses, and of course I believe I am in a position now to say something about or to resolve certain issues of fact which have arisen between the parties.

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During the cross-examination of Mr Lazenby you said, and I think it was Mr Lazenby, and also in re-examination of Mr (inaudible) you said, accurately in

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my view, that the allegations made against Mr Donovan and Mr Southerton amounted to allegations of perjury, forgery and conspiracy to pervert the course of justice. I think that was a perfectly accurate way to put it.

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I have now seen the evidence and I must tell you, Mr Cox, that I think the allegations made by Mr Hobbs in that regard have more than a passing strength to them. The question is what I should do about it. If this had reached the stage of a judgment I think I would have, as you once again said, it was not possible to resolve the differences between the parties on the basis of both sides telling the truth: you said that was an impossibility. I must say that if the case had stopped and a judgment had been sought from me as of yesterday I think it is quite likely that I would have held that there was indeed forgery.

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MR COX: Well, my Lord, may I say at once to your Lordship, first --

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MR JUSTICE LADDIE: You would have wanted to have an opportunity to make submissions.

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MR COX: I would have wanted to have made submissions, and in my respectful submission, unless your Lordship has, and I know your Lordship scarcely makes an utterance in court without a purpose or point, these observations fill me with a form of consternation that I can scarcely

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express to you. Not only do I submit that your Lordship would have been wrong so to hold and gravely wrong with a wholly inadequate basis for such a judgment I am sure that your Lordship would have been led to reflect after some detailed submissions from me as to the wisdom of such a judgment, but I am, my Lord I know --

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MR JUSTICE LADDIE: The position is quite simple, Mr Cox. I do not see why we should beat around the bush. The question is whether I should send the papers off to the DPP.

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MR COX: My Lord, I feel such complete confidence in the case that has been advanced by Mr Donovan that I feel I should leave it entirely to your Lordship. I, as your Lordship knows, practice in this field. I have to say to your Lordship that having advised now for nearly 20 years on serious prosecutions if I were met with those papers I know exactly the response that I would give them.

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MR JUSTICE LADDIE: You would say there would be no prospect of securing a prosecution.

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MR COX: It is inconceivable and indeed I am quite convinced that your Lordship, on a more detailed and maturer reflection when the case -- because all trials must of course go through several stages to reach a conclusion -- might have been led to reflect that that was a

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judgment without perhaps sufficient foundation.

MR JUSTICE LADDIE: Sufficient, yes, I see.

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MR COX: In our resuspectful submission, your Lordship of course is free to do precisely what your Lordship feels is your public duty, but I am taken by surprise by those observations. This case has now, as your Lordship, sees reached, I hope, an amicable conclusion with certain statements being made in public in relation to it. Your Lordship's comments now in my submission, given the way in which this matter is being left.

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MR JUSTICE LADDIE: Will not help.

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MR COX: Will not help, and I would urge your Lordship to consider once again whether they will be (inaudible).

MR JUSTICE LADDIE: Thank you very much, Mr Cox. Is there anything you wish to add, Mr Hobbs?

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MR HOBBS: My Lord, I was just --

MR JUSTICE LADDIE: I am not going to invite your views in relation to the matter I raised with Mr Cox. Mr Cox has persuaded me that whatever my suspicions may be it would not be an appropriate course for me to adopt in this case.

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MR HOBBS: I understand that. The only thing I was going to say, I was just thumbing through the CPR. The rules on discontinuance are in fact different now than what they were before. Leave is not required in circumstances such

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as this but in any event we are inviting your Lordship by consent to dismiss the action as a judicial act rather than discontinue it. Other than that, your

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Lordship has seen the paperwork. The paperwork is agreed subject to the infilling of the dates on annex 1 and really I am bound in accordance with the deed my clients have entered into to ask for an order in those terms, my Lord.

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MR JUSTICE LADDIE: Yes. Before making an order I wish to say something about this.

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This action has settled, and for that the parties must be congratulated. In nearly all cases, settlement is a more sensible option than a fight to the finish with its inevitable unpredictability and increased costs. But a settlement which is acceptable to the parties and allows them to put their dispute behind them can result in unintended injustice to others. A settlement frequently means that issues of fact are not resolved by an impartial tribunal; they are left in the air. In particular, where serious allegations of impropriety are made against a party or an individual either in the pleadings or during cross-examination a settlement results in the accusations being left hanging. Even if the parties agree a form of wording designed to put a public end to their dispute and the

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allegations of wrongdoing, there can remain within those
who have seen or heard the allegations a private belief
or suspicion that the soothing words are themselves a
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part of the compromise and have been used to hide the
accuracy of the allegations of wrongdoing. This is
particularly so where one party is larger and has
greater financial resources than the other. Some may
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wonder that the soothing words have been coerced out of
the other side. It is tempting to assume that there is
no smoke without fire. So the settlement of a dispute
which meets the needs of the parties may leave those who
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have been accused of wrongdoing with wounds which are
untended.

Those wounds can go on to produce long term and
painful scars which are virtually impossible to erase.
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The stronger the allegations of dishonesty and
impropriety against an individual the more likely it is
that a settlement will result in lingering doubts about
that individual. In many cases, this is an unavoidable
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consequence of the settlement. Although it may affect a
great injustice, the Court is powerless to do anything
about it. That is not always so.

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If the Court has been provided with all the material
necessary to determine that allegations of dishonesty
are unfounded I can see no reason why it should not

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Page 7

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express its conclusions.

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In this case, the most serious allegations of dishonesty have been made by each against the other. Certain individuals on each side have been accused of perjury and worse. I wish to say something about the allegations levelled at one witness.

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Mr Andrew Lazenby, who was in the early 1990s an employee of Shell holding a position of responsibility in that company's Promotions Department, was involved in discussions and dealings with the claimant, Mr John Arthur Donovan about the a number of the latter's proposals for promotions. Over a number of years Mr Donovan and his company and various of his friends and relatives have accused Shell of having illicitly taken some of his ideas and proposals and used them without his permission. Much, if not all the blame, for these alleged activities has been placed upon Mr Lazenby personally.

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Mr Donovan, his friends and relatives have engaged in a high profile campaign in which Mr Lazenby has been picked out for particular criticism and vilification. Serious allegations of dishonesty have been made against him and publicised as widely as possible. Mr Donovan and his supporters have criticised Shell both in private and in public for its continued employment of Mr Lazenby.

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Web sites containing criticism of Mr Lazenby in the strongest terms have been set up by Mr Donovan. Strongly worded letters have been sent to the Chairman and senior directors of Shell, the Prime Minister and other Members of Parliament, the Advertising Standards Authority and the Queen of the Netherlands, amongst others.

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Mr Donovan or his family and friends have picketed Shell (inaudible) House, Shell offices in the Hague and even the offices of Shell's solicitors. Advertisements have been taken out in and correspondence sent to the Press.

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That Shell has failed to surrender to pressure and has continued to employ Mr Lazenby must have been a relief to him, but nevertheless for a number of years he has been an identified target of this campaign of denigration. The strain on him must have been enormous.

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The allegations of dishonesty reached their peak in the current proceedings. Mr Lazenby has been accused of gross commercial impropriety. He has been subjected to two and a half days of determined, unrelenting unsparing cross-examination; his commercial morals have been examined and attacked; he has been accused of determined perjury before me; he has been asked searching and detailed questions about the minutiae of what did or did not take place during brief telephone conversations

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held, in some cases nine years ago. He was asked similar questions about correspondence of like antiquity.

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When he said he was unable to recall conversations and correspondence at this remove it was frequently suggested that this was untruthful and designed to hide his dishonest behaviour. When he recalled events and gave evidence about them it was said that he was lying.

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There was no criticism which was too small to be directed at him. For example, when he admitted that he had had dinner with a senior member of another agency which supplied some services to Shell it was used as the foundation for an assertion unsupported by any other material of commercial croneism and bias.

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In saying this, I do not criticise the cross-examiner, Mr Cox. I accept that he was putting the case of dishonesty to Mr Lazenby on instructions from his client.

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Mr Donovan did not intend this to be a dispute which would be lost in the darker recesses of the Chancery Division; nor did he intend the grilling of Mr Lazenby to be conducted away from the glare of publicity; far from it. I can do no better than quote a passage from a letter sent by Mr Donovan to and published by Marketing Week magazine in February of this year:

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"My claim against Shell UK in respect of the smart

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A loyalty scheme is set down for a three week High Court
trial in June. I invite Marketing Week to attend the
trial. You will then be able to make an informed
B assessment of Shell's ethical conduct after sensational
evidence is put into the public domain."

C Not content with that, Mr Donovan or persons on his
behalf have handed out leaflets re-printing that letter
and stating that it has been published in Marketing Week
magazine. The central part of Mr Donovan's campaign
against Shell has been the threat to humiliate Mr
Lazenby in public.

D I have watched Mr Lazenby during his prolonged
cross-examination. I have read and re-read with care the
contemporaneous and allegedly contemporaneous documents
which have been put to him. I have considered the
E evidence given by other witnesses including in
particular the evidence given by Mr Donovan and Mr Roger
Southwark. In my view, it would be a grave injustice if
the parties were to leave this Court having composed
F their differences but with lingering doubts remaining as
to Mr Lazenby's standing.

G During his cross-examination, Mr Lazenby conducted
himself with composure and without apparent rancour and
the abiding impression I gained was that he was the
employee who worked hard for his employer and put its

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commercial interests before the interests of outside firms. I have seen nothing to support the suggestion that in doing that he acted other than with propriety. I

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have no doubt that the evidence he gave before me was not only honest but as complete and frank as his memory would permit. Indeed, I think it is a great pity that the allegations of widespread and systematic dishonesty should be maintained against him. Once the

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contemporaneous documents which were disclosed on discovery had been seen, if not before, the allegations should have been dropped. The attacks on Mr Lazenby

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were, at the very least, recklessly made. They are completely without foundation. I hope that he leaves this Court not just with his reputation intact but enhanced. I will make the order the parties have asked me to make.

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MR COX: Will your Lordship permit a statement from me because though your Lordship is excluding me from impropriety from the point of view of the Bar I feel there remains some residue. I am de (inaudible).

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MR JUSTICE LADDIE: (inaudible) about you at all.

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MR COX: My Lord, I am sorry but your Lordship's statement leaves little room. Your Lordship has made me out to be the mouthpiece of reckless assertions and allegations of dishonesty. Where I come from at the Bar, it is not

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proper to put forward reckless assertions of dishonesty.

May I make it clear to you --

MR JUSTICE LADDIE: Mr Cox --

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MR COX: May I make it clear to your Lordship that utterly refute that there can have been any recklessness in the allegations made to Mr Lazenby. They were made on instruction; they were made with what I considered to be proper foundation; they were made in a way that was exploratory of the issues relevant to this case.

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Therefore, in my respectful submission to your Lordship, though I am grateful for the words that your Lordship pronounces exculpating me from impropriety the fundamentals of your Lordship's judgment are that they were reckless. They were not. They were with foundation, they were proper and in my submission the remarks your Lordship has made are, if I may say so, they are ones which I would wish your Lordship had not made.

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MR JUSTICE LADDIE: I understand your position, Mr Cox. Let me make it clear. You cross-examined Mr Lazenby hard and that was your job. I do not criticise you for doing that. On the contrary. It would have been probably improper for you not to have done it in view of the allegations put that were being made on behalf of your client.

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MR COX: It is the word "reckless", my Lord.

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MR JUSTICE LADDIE: Reckless based upon what was known to the clients. Mr Cox, you can shake your head as much you like. Not one word of what I said was meant to be a criticism of you. I am sorry that you do not understand it that way, but I have no doubt at all -- I will make it further clear -- I have no doubt at all that Mr Donovan in pursuing this case was acting when he commenced this case he believed that wrongdoing had been committed to him by the defendants.

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MR COX: And sustained two and a half days of relentless and intense cross-examination.

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MR JUSTICE LADDIE: Absolutely.

MR COX: Probing and unpleasant allegations against him.

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MR JUSTICE LADDIE: Absolutely. He did not know prior to discovery what the state of the documentation was inside Shell. I think it would be unwise to go any further than that, Mr Cox.

MR COX: I agree.

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MR JUSTICE LADDIE: What I do make clear now in case it was not clear to those in court before. As I have said, none of this was a criticism of you, your junior or your solicitors. Maintenance of the attacks on the basis of the known facts was something which I attribute to the client, not to you. I have no doubt at all, Mr Cox, none whatsoever, that you would not have advanced allegations

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against Mr Lazenby or anybody else recklessly; if any suggestion to the contrary was made it was not the intention.

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I hope that is clear, Mr Cox.

MR COX: I am grateful for that. Thank you.

MR JUSTICE LADDIE: I will make the order requested by the parties.

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(The Court adjourned)

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We hereby certify that the above is an accurate and complete record of the proceedings, or part thereof.

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Signed: SMITH BERNAL REPORTING LIMITED

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